

To: Keith Howard[KHoward@cwclaw.com]
Cc: Gary Levin (garyl@levinterminal.com)[garyl@levinterminal.com]; thompson, rachel[thompson.rachelle@epa.gov]
From: Jolish, Taly
Sent: Wed 8/13/2014 3:59:55 PM
Subject: RE: Question re United Heckathorn documents

Keith and Gary, I wanted to let you know that EPA will not be releasing the 56 deposition transcripts we discussed in May, but will release the Pool letter. I apologize for conveying the impression that we might be able to withhold it, but the federal government does not assert “settlement confidential” as a privilege, particularly not as to long-ago settled matters. Please call me if you would like to discuss this matter further, but the document will be produced as part of the final FOIA response this week. Taly

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From: Keith Howard [mailto:KHoward@cwclaw.com]
Sent: Thursday, May 29, 2014 9:38 AM
To: Jolish, Taly
Cc: Gary Levin (garyl@levinterminal.com)
Subject: RE: Question re United Heckathorn documents

Thanks. Given that Montrose has objected to the production of the requested documents and cited a “confidentiality Order,” for the present Levin’s position is the same. Clearly, the Roger Pool letter was submitted as a part of a settlement negotiation and is privileged. If Montrose’s position changes or if EPA determines that the depositions are not protected by a confidentiality order please let me know and Levin may revisit its current position with respect to the depositions. On another topic, Levin understands that EPA made a presentation this week to the City of Richmond on the status of the United Heckathorn Site. Levin’s understanding is that EPA informed the City that “clean up” would begin next year. I am not aware of any recent EPA updates on the status of the Focused Feasibility Study, but assume there will be one before any clean up begins. Any information you could give me regarding EPA’s schedule of

anticipated activities related to the site will be appreciated.

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From: Jolish, Taly [<mailto:jolish.taly@epa.gov>]
Sent: Wednesday, May 28, 2014 3:09 PM
To: Keith Howard
Subject: RE: Question re United Heckathorn documents

Sure, Keith. As noted below, "Pool letter" refers to "a letter that Roger Pool sent to John Lyons in 1992 (January 2nd, to be specific)." The letter was also cc'd to you, as you'll see in the attachment. Kelly Richardson of Latham & Watkins is current counsel to Montrose:



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From: Keith Howard [<mailto:KHoward@cwclaw.com>]
Sent: Wednesday, May 28, 2014 3:01 PM
To: Jolish, Taly
Subject: RE: Question re United Heckathorn documents

Could you either send me the "Roger Pool Letter" or give me the date (I may have it in my files). While I have handled the regulatory end of Heckathorn for Levin neither I nor our firm handled the litigation. Accordingly, Levin wants to check with the Ferella, and Levin's current litigation counsel before taking a position on the request. It might be helpful if you could give me the name of the current Montrose counsel so I can pass it on to the other Levin counsel. Thanks for the help.

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From: Jolish, Taly [<mailto:jolish.taly@epa.gov>]
Sent: Tuesday, May 27, 2014 10:46 AM
To: Keith Howard
Subject: RE: Question re United Heckathorn documents

Keith, I'm attaching the FOIA request, though it's been modified since submission. The request was too broad for us to effectively respond to, so we invited the requester to identify documents he believes are relevant from the site indexes, with the caveat that we would subsequently determine releasability. So both the Pool letter and the 56 deposition transcripts have been explicitly requested by Professor Hurley. We're in the "determination of releasability" phase now and have about 10 days left to figure out if there's any cause to withhold the documents. Please let me know what you're thinking. Please note that Montrose responded today that, based on various confidentiality orders from the litigation, they oppose EPA's release of any of the transcripts, though I haven't figured out yet whether the orders cover all (or any) of the depositions. Thanks. Taly

From: Keith Howard [<mailto:KHoward@cwclaw.com>]
Sent: Tuesday, May 27, 2014 9:48 AM
To: Jolish, Taly
Subject: RE: Question re United Heckathorn documents

Could you please send me a copy of the FOIA request. Then I can discuss with the client exactly what is being requested. Thanks.

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From: Jolish, Taly [<mailto:jolish.taly@epa.gov>]
Sent: Monday, May 19, 2014 12:20 PM
To: Keith Howard
Subject: Question re United Heckathorn documents

Hello, Keith – I believe we spoke briefly last year about United Heckathorn developments, and I now have a question about a FOIA request we've received. A FOIA requester has asked for various documents related to the United Heckathorn Superfund site, as well as several other sites. Among the Heckathorn documents are dozens of deposition transcripts, as well as a letter that Roger Pool sent to John Lyons in 1992 (January 2nd, to be specific).

John suggested I inquire of you whether you mind our producing these documents, with the thought that (1) the depositions may be protected by a confidentiality order and (2) the Pool letter may be protected in some other fashion. I'm attaching a list of the relevant depositions – none of the transcripts state on their face that they're covered by a confidentiality order. If you think they might be anyway, would you mind sending me the order? We have so many dozens (hundreds?) of boxes of United Heckathorn litigation material that I would not be able to locate it. Second, the Pool letter appears to be a settlement-related communication, but does not claim to be "settlement confidential." Also, it quotes from various depositions, which I understand might be protected by the order, though, again, there is no reference to any confidentiality claims.

Please call me if you have questions. Or you can feel free to tell me you have no concerns about a full production! Taly

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